MONTANA LEGISLATIVE HISTORY

Chapter 566 19 79

Bill H 800 S _____ Original bill & history ____C

H. Committee on Agriculture, Livestock & Irrigation		S. Committee on Agriculture, Livestock & Irrigation	
Hearing Date(s) Feb 19	✓ C	Hearing Date(s) Mar 23	✓ C
Feb 21	✓ C	_____	____C
_____	____C	_____	____C
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Date Out Feb 19	✓ C	Mar 23	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

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House BILL NO. 800

INTRODUCED BY Ellis

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS; REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Livestock Marketing Act".

Section 2. Purpose. The purpose of [this act] is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(4) "Livestock broker" means a business, not including facilities, conducted for the receiving, handling, and care of livestock and involving livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock dealer" means a business conducted in facilities utilized for the receiving, handling, and care of livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(6) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for

fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock of his or its own breeding and raising, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(7) "Person" means an individual, firm, association, partnership, or corporation.

(8) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

Section 4. Regulation of livestock markets, dealers, and brokers. The department shall:

(1) supervise and regulate livestock markets, livestock brokers, and livestock dealers in this state;

(2) regulate the properties, facilities, operations, services and practices of all livestock markets, livestock

brokers, and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe by general order or otherwise rules in conformity with [this act] applicable to all livestock markets, livestock brokers, and livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce [this act] and adopt rules necessary to carry out [this act].

Section 5. Posting of certificate or license. Every person certified or licensed under the provisions of [this act] shall conspicuously post at his place of business for inspection by any other person the certificate or license issued by the department.

Section 6. Financial responsibility. (1) Every livestock market, livestock broker, or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all

livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

Section 7. Penalties. (1) A person found, after notice and hearing, to be in violation of [section 6] shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of [section 6] after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) The maker of any bankable instrument who knowingly and without right fails to honor or causes another to dishonor that instrument once it is issued or delivered in payment for a livestock purchase is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both.

Section 8. Title warranty of livestock sold. A livestock market, livestock broker, or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the

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market at the time of the sale.

Section 9. Certificate to operate livestock market required -- application. (1) A person may not operate a livestock market unless he first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience shall be in writing, verified by the applicant, and filed with the department. It shall specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered to them by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the

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names and addresses of the operators thereof;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

Section 10. Certificate to operate livestock market -- hearings -- limitations on issuance. (1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application and notice of hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the

granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

Section 11. Livestock markets -- transfer of certificates. The department may approve the transfer of

ownership of a certificate of public convenience and necessity issued pursuant to [this act] without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of [section 10] of a hearing to consider an initial application for a certificate.

Section 12. Livestock markets -- fee. A person operating a livestock market shall pay annually on May 1 a fee of $100 to the department. All fees shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department.

Section 13. Livestock markets -- bond required. (1) Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with sureties to be approved by the board, in the minimum sum of $10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful

owner of livestock so consigned and delivered to it for sale; and

(b) a full compliance with [this act] including all rules adopted under [this act].

(2) When approved, the bond shall be filed with the board.

(3) A civil action may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence.

Section 14. Livestock markets -- cancellation or suspension of certificate. (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(b) is in violation of any of the provisions of [this act];

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a

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complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under [this act] may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

Section 15. Appeal by holder of or applicant for certificate -- bond -- procedure. An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the

appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

Section 16. Regulation of certain nonmarket sales. (1) A person not a livestock market operator authorized under [this act] conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department;

(h) such other information as the department considers necessary.

(3) Livestock sold through a nonmarket sale as described by this section must be bred, raised, and owned by members of the association sponsoring the sale or be bred, raised, and owned by the persons selling the livestock at the test station sale.

Section 17. Occasional off-premises sales authorized. (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under [this act] may conduct an off-premises sale without obtaining prior approval of the department.

Section 18. Livestock markets -- record keeping -- reports. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

Section 19. Dispersal sales. Dispersal sales conducted

through a livestock market must meet the requirements of [this act].

Section 20. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold and shall be accorded every facility by the owners thereof in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until he has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

Section 21. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place it in quarantine, to be disposed of as directed by the department.

Section 22. Sale of animals of unknown ownership. (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession

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of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in [section 23].

Section 23. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt therefor shall relieve the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and

account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

Section 24. Penalties. A person who violates any provision of [sections 9 through 23] or rules adopted by the department under [sections 9 through 23] is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person who has been convicted of a violation of [sections 9 through 23] and who subsequently is found guilty of another violation of [sections 9 through 23] shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

Section 25. Livestock brokers and livestock dealers -- licenses. (1) No person may operate as a livestock broker or livestock dealer without a license. A person who wishes to operate as a livestock broker or livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the certificate together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and

members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(d) a detailed financial statement setting forth all assets and liabilities of the applicant pertinent to the business for which the license is sought;

(e) if the applicant is a livestock dealer, a description of the facilities at which he proposes to operate.

(2) An application fee of $50 must be submitted with each application for a livestock broker's or livestock dealer's license. The fee shall be the first annual fee if the license is granted.

(3) Livestock brokers and livestock dealers shall pay an annual fee of $50 and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

(4) When an applicant has paid the fee and met the requirements of this section, the department shall issue to

the applicant a license which entitles the licensee to engage in the business specified in his application for a period of 1 year unless the license is suspended or revoked under [this act].

Section 26. Refusal of livestock broker's or livestock dealer's license. The department shall refuse to issue or renew a license if the applicant:

(1) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets; in excess of total current liabilities;

(2) is in violation of any of the provisions of [this act];

(3) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(4) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(5) is in violation of the rules adopted by the department;

(6) has failed to comply with a lawful order of the department;

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(7) has not filed a surety bond in the form and amount required under [section 27];

(8) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(9) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.

Section 27. Livestock brokers and livestock dealers -- bond required. (1) A livestock broker or livestock dealer applying for a license under [this act] shall maintain a bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement with the department showing he is maintaining a bond or its equivalent under the packers and stockyards act. The department may require evidence of the bond to be filed with it.

(2) The amount of the bond shall be set by the department but may not be less than $5,000. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying to the rightful recipient the purchase price of all livestock he purchases for himself or others and on the principal

safely keeping and properly disbursing all funds received on behalf of others."

(3) Each bond shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may bring an action to recover on the bond. At least 30 days' notice in writing shall be given to the department by any party terminating the bond.

Section 28. Inspection of records. A livestock broker or livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock broker or livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business.

Section 29. Livestock brokers and livestock dealers -- suspension and revocation of license -- procedure. Whenever the department finds that any livestock broker or livestock dealer has violated the provisions of [this act], the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person. Before any license issued under [this act] may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him and a hearing shall be had before the department to determine whether the license should be

suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

Section 30. Termination of livestock broker or livestock dealer license. A license issued under [this act] terminates at the close of business on May 1 of each year following the issuance of the same unless the annual fee has been paid. Termination of the license will automatically occur if the bond required by [section 27] is terminated.

Section 31. Penalties. A person who violates any provision of [sections 25 through 28] or rules adopted by the department under [sections 25 through 28] is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

Section 32. Jurisdiction. The justices' courts have jurisdiction of all actions for violation of the provisions of [this act].

Section 33. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by [this act] may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market, livestock broker, or livestock dealer as defined in [section 3] without the license or certificate and bond required by [this act]. The court shall enjoin the person from further activities as a livestock market operator, livestock broker, or livestock dealer until the license or certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in [this act].

Section 34. Transition. Licenses and certificates issued before and still in effect on July 1, 1979, are valid until May 1, 1980, unless suspended or revoked pursuant to this act. The actions of persons holding such existing licenses and certificates are governed by this act.

Section 35. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

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in all valid applications that are severable from the invalid applications.

Section 36. Codification. This act is intended to be codified as an integral part of Title 81, chapter 8, and the provisions contained in Title 81, chapter 8, apply to this act.

Section 37. Repealer. Sections 81-8-101 through 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through 81-8-210, MCA, are repealed.

-End-

HOUSE BILL NO. 800

REPRESENTATIVE ROBERT ELLERD, Chief Sponsor, introduced the bill. This bill would revise the laws regulating livestock markets, dealers, and brokers. He stated that they are asking the committee to adopt this bill as the Montana Livestock Marketing Act. Montana already has the best marketing laws in the nation but they did not feel that the fines were high enough to be effective. This bill will raise the penalties. After notice of hearing, if a person is found to be in violation they will be assessed a civil penalty, by the department, of not less than $100 or more than $5,000, have their license or certificate suspended or revoked, or both. He took this proposal to the Board of Livestock and asked if they had any objections, there was none.

With a 40 thousand dollar a year industry there should be felony penalties instead of misdemeanors, as the present law provides.

Vice-Chairman Vicki Johnson assumed the Chair.

ROBIN MACNAB, Montana Livestock Markets Association, stated that every market is a member of the association in Montana. He then listed all the members. He quoted some figures on the amount of money that goes through the markets each year. 1977 was the biggest year for cattle sales through the markets.

He concluded by stating that they are in full support of this bill and feel with a business this big the violators should have these strict penalties forced on them.

BOB ROBBINS stated that he felt cattle was the number on business in the state. He hoped there would not be any resentment because the bill had been drafted by someone who lived out of the state. The gentleman who drafted this bill was the man who drew up the first Livestock Marketing Act in Montana, and it is the best one in the nation.

OPPONENTS:

TERRY MURPHY, National Farmers Organization, stated that the NFO is made up of farmers and ranchers who group together to get a better price for their cattle. They are interested in everything that has to do with them and the selling of their cattle. They presented amendments to the present law. They felt this would be better than a new marketing act. They are exempt from the present law and feel the penalties could be raised in the present statutes instead of drafting a new act. (proposed amendments attached)

PHIL OLSON, National Farmer Organization, stated that he had followed the interim study committee on the marketing laws. It was the findings of the committee that the existing laws were the best in the United States, and with a few minor changes would be even better.

TERRY MURPHY continued by stating that the organization was established to allow producers to work together. They are not dealers of livestock, but producers that sell their own products together to get a better price. HB 800 defines a livestock dealer in such a way that it may include members of the NFO. As individuals they should not have to be licensed to sell. Under the present law they do not have to be licensed, but this bill will provide that they have to be licensed. They had no quarrel with the increase in penalties. In fact, they agreed that they should be raised. They recommended that the committee adopt the proposal presented today instead of HB 800.

Mr. Murphy then read the minutes of the interim committee meeting that Mr. Ellerd had attended. The committee approved of amending the present laws but not adopting a new law as was proposed to them by Representative Ellerd.

JIM STEVENS AND MARION LITTLE, rose in opposition to the bill and concurred with the proposed amendments to the present law.

CHARLES SIDERIUS, BETTY SIBLEY, DOUG BROOKS AND TOM LITTLE, all from the Northwest Montana Quarter Horse Association rose in opposition to the bill and supported the proposal by Terry Murphy. They were opposed to Section 3(e) and Section 16(3), which stated that the animals had to be bred and raised by the association selling them.

SENATOR ED SMITH submitted a letter in opposition to the bill. (letter attached)

CHARLES BROWN, Department of Livestock, appeared not as a opponent or a proponent but to clarify page 16, lines 4 and 5, as having an error in the referenced section numbers.

REPRESENTATIVE ELLERD closed stating that this bill is to the benefit of the livestock dealers and disagreed with the amendments proposed. The NFO has been told that they would be exempt form this bill as they are from the present law. He didn't feel they should except amendments that were drafted overnight, when they had worked for two years to come up with HB 800.

He concluded stating that he would be willing to amend the bill, deleting the words, "bed and raised," to satisfy the quarter horse people.

Chairman Day resumed the Chair.

Questions were asked by the committee and the hearing on HB 800 was closed.

EXECUTIVE SESSION:

HOUSE BILL NO. 849

Representative Johnson moved, DO PASS. The motion was carried with

Representative Ellerd opposed.

HOUSE BILL NO. 863

Representative Hirsch moved, DO PASS. The motion was carried 11 to 6. Opposed: Bengtson, Conroy, Ellerd, Hand, Roth, Smith

HOUSE BILL NO. 800

Representative Conroy moved, DO PASS, with committee of the whole amendments deleting the words, "Bred and Raised."

Representative Dassinger made a substitute motion to adopt the proposed amendments submitted by the NFO. The motion failed 10 to 7. Favored: Brand, Dassinger, Day, Ernst, Hirsch, Johnson, Lien

The original motion to DO PASS was carried 12 to 5. Opposed: Brand, Dassinger, Ernst, Hirsch, Johnson

The meeting was adjourned at 2:20 p.m.

William Day

William M. Day, Chairman

Judy J. Mook, Secretary

HOUSE AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE

February 21, 1979

The meeting was called to order by Chairman Day at 5:10 p.m. with all members present except Representative Hayne.

The purpose of this meeting was to adopt a Statement of Intent for HB 800, which had passed the committee at the previous meeting.

REPRESENTATIVE ELLERD, Chief Sponsor of HB 800, moved, TO AMEND, the proposed Statement of Intent by striking the last sentance. (indicated on attached statement)

He explained that the Department of Livestock had presented him and Chairman Day with a proposed statement which included the last sentance of the statement. Terry Murphy, lobbyist for NFO, wrote a letter to each member of the committee with the letter that Mr. Graham had submitted to Representative Ellerd for consideration. In Mr. Murphy's letter he had stated that it was the recommendation of the Department to insert this language. Representative Ellerd said this was a personal letter and how copies of it got circulated he did not know.

LES GRAHAM, Department of Livestock, stated that he had sent the note to Representative Ellerd with the statement. "It is not the Department's recommendation but just a proposal that was submitted to Representative Ellerd for his consideration. We thought that a letter of intent such as this would help to debate the bill when it got to the house floor. only gave the proposal to Representative Ellerd and Chairman Day."

"To clarify how the proposal had been circulated, Mr. Murphy came to our office and asked for it and we gave it to him and he made copies and circulated them. All the information in our files are public information and we have to let the public look at it if they wish, so that is how this proposal got circulated."

The question was called by Representative Brand.

REPPRESENTATIVE ELLERD'S motion, TO AMEND, failed 5 to 11. Favored: Conroy, Ellerd, Jensen, Roth and Smith.

REPRESENTATIVE LIEN moved, TO ADOPT THE STATEMENT OF INTENT.

REPRESENTATIVE ELLERD made a substitute motion to, NOT ADOPT THE STATEMENT OF INTENT. The motion failed 5 to 11. Favored: Brand, Conroy, Hand, Hirsch, and Roth.

REPRESENTATIVE LIEN'S motion, TO ADOPT, was carried 14 to 2. Opposed: Roth and Conroy.

A copy of the Statement of Intent is attached.

The meeting was adjourned at 5:35 p.m.

William M. Day, Chairman

Judy J. Nook, Secretary

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

March 23, 1979

The twenty-seventh meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 442 of the State Capitol by Chairman Galt at 9:00 a.m.

ROLL CALL: All members were present with the exception of Senator Graham.

CONSIDERATION OF HOUSE BILL 800: Representative Ellerd had introduced this bill which generally revises the livestock marketing laws in Montana. Some of the definitions are changed from the current law and it also increases the penalties for fraud by changing them from a misdemeanor to a felony. He said the industry is growing and the price of livestock is at the highest it has ever been and the amount of fraud has increased. This bill has been several years in the drafting process. It was originally drafted by the Livestock Marketing Association and was not in good shape when he received it. The Legislative Council and Charles Brown from the Department of Livestock worked on the bill and made the necessary changes and he had agreed with the changes. The statement of intent came up in the House Committee on the last day before transmittal and he was opposed to one part of the statement and an attempt to amend the statement failed. He presented a resolution to the committee, attachement #1, from the Board of Livestock and signed by Representative Ellerd and Terry Murphy, lobbyist for the NFO. The objection to the bill came from the NFO because there were some misunderstandings as to the NFO's position under the bill. Under the present bill they are exempt from buying a license to deal in cattle and it was his intention that they be exempt under this bill. The Attorney General cannot make a ruling on this until it becomes law. This attached resolution would make it clear that the NFO be exempt under this bill and that the department goes on record that they would not attempt to license the NFO. He also had a proposed amendment to the statement of intent see attachment #2. This amendment would strike the last sentence, lines 17 through 23 of the statement of intent.

Terry Murphy, representing the NFO, said they did have a problem with the bill as it was originally presented because they felt the NFO's position was not clearly spelled out in the bill. He said currently the NFO is exempt from the licensing provision under the present law and this came from an Attorney General's opinion. They wanted it made clear in the new law that it was the intent of the bill that the NFO's position was

still to be exempt. He said the NFO has agreed to this bill with the resolution and the amendment to the statement of intent in a spirit of compromise to support a new law primarly because of the increase in cattle prices. With the resolution endorsed by the Board of Livestock and Representative Ellerd and in print, if anyone, in the future, trys to challenge the Board to try to get the NFO to purchase a license there would be evidence that it was not the intent of the Legislature or the Board to have the NFO buy a license.

Charles Brown, Department of Livestock, said the department had been involved with the bill during its preparation and they now felt they could support the bill and felt it would provide some much needed protection.

Alice Fryslie, Montana Cattlemen's Association, commended the NFO and Representative Ellerd in resolving the problems that had occured as a result of the bill and the statement of intent. She felt the final result was a good bill and felt the penalties should be more strigent and they supported the bill with the amendment and the resolution.

Mons Teigen, Montana Stockgrowers and Woolgrowers, said this had been a frustrating piece of legislation and felt the statement of intent had been the problem. They now support the bill.

Chris Johanson, Montana Farmers Union, had no objection with House Bill 800 with the proposed amendments.

Representative Ellerd in closing said the livestock dealers license had been increased to a $50 fee and this would probably generate enough money for the department to enforce the act. He thanked all the people that had been involved in getting this bill satisfactory to all concerned.

Senator Conover moved that the proposed amendment be adopted. Motion carried.

DISPOSITION OF HOUSE BILL 800: Senator Conover moved that House Bill 800 BE CONCURRED IN As Amended. Motion carried. Senator Graham absent.

Senator Galt will carry the bill on the floor.

Senator Hager moved that if the bill could go through the Senate faster that it be placed on the Consent Calendar. Motion carried.

The meeting was then adjourned.

Jack E. Galt

SENATOR JACK E. GALT, Chairman

#1

THOMAS L. JUDGE, Governor

ANIMAL HEALTH DIVISION
Glenn C. Halver, D.V.M.
Administrator

BRANDS-ENFORCEMENT DIVISION
James L. "Les" Graham
Administrator

BOARD OF LIVESTOCK
Robert G. Barthelmess, Mil
Chairman
Robert L. Deschamps, Jr., S
Eugene C. Donaldson, Helen
Fred A. Johnston, Great Fa
Vernon V. Keller, Fishtail
Ralph J. Parker, Fort Shaw
Robert M. Simons, Turner

STATE OF MONTANA
DEPARTMENT OF LIVESTOCK
HELENA, MONTANA 59601
(406) 449-2043

March 15, 1979

TO WHOM IT MAY CONCERN:

Impact of HB 800 on NFO Type Marketing Activities

It is the opinion of the attorney of the Department of Livestock that the definitions of livestock dealer, livestock broker, and livestock market, as contained in House Bill 800, do not require the licensing of the NFO for the kinds of marketing in which it presently is engaged. The Department therefore goes on record that should HB 800 become law it will not seek to license the NFO as a dealer for the kinds of livestock marketing activities presently engaged in by the NFO.

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Les Graham
by LES GRAHAM, Administrator
Brands-Enforcement Division

March 23, 1979

I agree with and endorse the above resolution as a true representation of my intent as sponsor of HB 800.

Representative Robert A. Ellerd
Representative Robert A. Ellerd

Witness:
Terry Murphy NFO Folder

Date 3-23

ROLL CALL

AGRICULTURE COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. KOLSTAD	✓		
SEN. AKLESTAD	✓		
SEN. BOYLAN	✓		
SEN. CONOVER	✓		
SEN. GRAHAM			✓
SEN. HAGER	✓		
SEN. NELSON	✓		
SEN. GALT, Chairman	✓		

Each Day Attach to Minutes.

SENATE AGRICULTURE COMMITTEE

BILL H.B 800 VISITORS' REGISTER DATE 3-2

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OP
Terry Murphy	N.F.O.	800	✓	
Mons. Teigen	Mont. Stockgrowers & Wheatgrowers	800	✓	
Charles Brown	Dept. of Livestock	800	✓	
Elmer Thomas	Mont. Farmers Union	800	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

EX 2

PROPOSED AMENDMENTS TO HB 800, third reading copy
Representative Ellerd

1. Page 2, lines 17 through 23.
Following: "brokers."
Strike: remainder of lines 17 through 23 in their entirety

STANDING COMMITTEE REPORT

March 23 19 7

MR. President

We, your committee on Agriculture, Livestock & Irrigation

having had under consideration House Bill No. 80

Respectfully report as follows: That House Bill No. 8

third reading bill

BE CONCURRED IN

DO PASS

Chairman

STATE PUB. CO.

STANDING COMMITTEE REPORT

March 23 19 79

MR. President

We, your committee on Agriculture, Livestock & Irrigation

having had under consideration Statement of Intent of House Bill No. 800

Ellerd (Galt)

Respectfully report as follows: That Statement of Intent House Bill No. 800,
[illegible] statement of intent be amended as follows:

1. Page 2, lines 17 through 23.
Following: "brokers."
Strike: remainder of lines 17 through 23 in their entirety

And, as amended,
SE CONCURRED IN
DO PASS

SEN. JACK E. GALT, Chairman.

STATE PUB. CO.
Helena, Mont.

STATEMENT OF INTENT RE: HB 800

A statement of intent is required for this bill in that it delegates authority to adopt rules in section 4.

The purpose of the "Montana Livestock Marketing Act" as stated in the bill is to simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions; to promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock; and to encourage, stimulate, and stabilize the livestock economy of the state.

The Department of Livestock is given, under section 4, authority to enforce and to adopt rules necessary to carry out the act. It is the legislative intent in delegating this rulemaking authority that the discretion granted the Department of Livestock is for the purpose of supervising and regulating livestock markets, livestock brokers, and livestock dealers in the state; of regulating the properties, facilities, operations, services, and practices of all livestock markets, livestock brokers, and livestock dealers; and of supervising and regulating livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock markets and purchasers of livestock.

A major concern of the act is to establish stiff penalties for unfair, deceptive, and fraudulent market practices. It is intended that by providing stricter penalties and that by giving the Department of Livestock authority to assess civil penalties for some violations, livestock marketing in Montana will be strengthened.

It is the intent of this bill that in the adoption of rules under section 4 and in the general enforcement of this act that the Livestock Department's first function is to protect livestock producers consigning livestock to markets or selling livestock to or through dealers and brokers. Secondly, it is the intent of the legislature that so long as the purpose of protecting livestock producers is met, the enforcement and rules under this act not unduly interfere with the operations of the businesses of livestock markets, livestock dealers, and livestock brokers. ~~It--is--the legislature's--further--intent--that--the---definitions---of livestock--broker,-dealer,-and-market-contained-in-section-3 are-not-applicable-to-the-kind--of--marketing--of--livestock presently--undertaken--by-various-agricultural-organizations who-group-livestock-of-member-producers--in--order--to--gain better-prices.~~

First adopted by the HOUSE COMMITTEE ON AGRICULTURE, LIVESTOCK, AND IRRIGATION on February 19, 1979.

HB 800

HOUSE BILL NO. 800

INTRODUCED BY ELLERD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGULATING LIVESTOCK MARKETS, DEALERS, AND BROKERS; REPEALING SECTIONS 81-8-101 THROUGH 81-8-109, 81-8-121 THROUGH 81-8-133, AND 81-8-201 THROUGH 81-8-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Livestock Marketing Act".

Section 2. Purpose. The purpose of [this act] is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the market place in relation to all market conditions involving the sale and purchase of livestock.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(4) "Livestock broker" means a business, not including facilities, conducted for the receiving, handling, and care of livestock and involving livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(5) "Livestock dealer" means a business conducted in facilities utilized for the receiving, handling, and care of livestock purchased by it for its own account for resale, for the account of any principal for delivery to him, or for slaughter. It does not include a farmer or rancher who buys or sells livestock in the ordinary course of his farming or ranching operation.

(6) "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for

REFERENCE BILL

fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock ~~of--his-or-its-own-breeding-and-raising~~, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(7) "Person" means an individual, firm, association, partnership, or corporation.

(8) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

Section 4. Regulation of livestock markets, dealers, and brokers. The department shall:

(1) supervise and regulate livestock markets, livestock brokers, and livestock dealers in this state;

(2) regulate the properties, facilities, operations, services and practices of all livestock markets, livestock

brokers, and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe by general order or otherwise rules in conformity with [this act] applicable to all livestock markets, livestock brokers, and OR livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce [this act] and adopt rules necessary to carry out [this act].

Section 5. Posting of certificate or license. Every person certified or licensed under the provisions of [this act] shall conspicuously post at his place of business for inspection by any other person the certificate or license issued by the department.

Section 6. Financial responsibility. (1) Every livestock market, livestock broker, or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all

livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

Section 7. Penalties. (1) A person found, after notice and hearing, to be in violation of [section 6] shall be assessed a civil penalty by the department of not less than $100 or more than $5,000, have his license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of [section 6] after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have his license or certificate suspended or revoked.

(3) The maker of any bankable instrument who knowingly and without right fails to honor or causes another to dishonor that instrument once it is issued or delivered in payment for a livestock purchase is guilty of a felony and on conviction may be imprisoned for not more than 5 years or fined not more than $10,000, or both.

Section 8. Title warranty of livestock sold. A livestock market, livestock broker, or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the

market at the time of the sale.

Section 9. Certificate to operate livestock market required -- application. (1) A person may not operate a livestock market unless he first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience shall be in writing, verified by the applicant, and filed with the department. It shall specify the following:

(a) the names of the persons applying for a certificate together with their permanent addresses. If the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered to them by the applicant in the operation of the livestock market;

(e) the location of other livestock markets within a radius of 200 miles of the proposed livestock market and the

names and addresses of the operators thereof;

(f) a detailed statement of the facts upon which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, the services to be offered, and the anticipated revenue from inspection that may be derived by the state;

(g) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(h) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities;

(i) any additional information the department may require.

Section 10. Certificate to operate livestock market -- hearings -- limitations on issuance. (1) Upon the filing of the application, the department shall fix a time and place for a hearing thereon, which may not be less than 10 days after the filing. The department shall have a copy of the application and notice of hearing served by mail upon:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the

granting of any such certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

Section 11. Livestock markets -- transfer of certificates. The department may approve the transfer of

ownership of a certificate of public convenience and necessity issued pursuant to [this act] without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of [section 10] of a hearing to consider an initial application for a certificate.

Section 12. Livestock markets -- fee. A person operating a livestock market shall pay annually on May 1 a fee of $100 to the department. All fees shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department.

Section 13. Livestock markets -- bond required. (1) Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with sureties to be approved by the board, in the minimum sum of $10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful

owner of livestock so consigned and delivered to it for sale; and

(b) a full compliance with [this act] including all rules adopted under [this act].

(2) When approved, the bond shall be filed with the board DEPARTMENT.

(3) A civil action may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence.

Section 14. Livestock markets -- cancellation or suspension of certificate. (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(b) is in violation of any of the provisions of [this act];

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a

complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under [this act] may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

Section 15. Appeal by holder of or applicant for certificate -- bond -- procedure. An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the

appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

Section 16. Regulation of certain nonmarket sales. (1) A person not a livestock market operator authorized under [this act] conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department;

(h) such other information as the department considers necessary.

~~(3) Livestock sold through a nonmarket sale as described by this section must be bred, raised, and owned by members of the association sponsoring the sale or be bred, raised, and owned by the persons selling the livestock at the test station sale.~~

Section 17. Occasional off-premises sales authorized. (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under [this act] may conduct an off-premises sale without obtaining prior approval of the department.

Section 18. Livestock markets -- record keeping -- reports. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

Section 19. Dispersal sales. Dispersal sales conducted

through a livestock market must meet the requirements of [this act].

Section 20. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold and shall be accorded every facility by the owners thereof in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until he has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock so sold.

Section 21. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place it in quarantine, to be disposed of as directed by the department.

Section 22. Sale of animals of unknown ownership. (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession

of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in [section 23].

Section 23. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish his lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with chapter 4, part 6, of Title 81, relating to the distribution of estray money, and the department's receipt therefor shall relieve the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and

account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

Section 24. Penalties. A person who violates any provision of [sections 9 through 23] or rules adopted by the department under [~~sections-9-through-23~~ SECTION 4] is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person ~~who-has-been~~ convicted of a SUBSEQUENT violation of [sections 9 through 23] ~~and-who-subsequently-is-found-guilty of--another--violation--of--[sections-9-through-23]~~ OR RULES ADOPTED UNDER [SECTION 4] shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

Section 25. Livestock brokers and livestock dealers -- licenses. (1) No person may operate as a livestock broker or livestock dealer without a license. A person who wishes to operate as a livestock broker or livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the ~~certificate~~ LICENSE together with their permanent addresses and, if the applicant is a firm, association, partnership,

or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(d) a detailed financial statement setting forth all assets and liabilities of the applicant pertinent to the business for which the license is sought;

(e) if the applicant is a livestock dealer, a description of the facilities at which he proposes to operate.

(2) An application fee of $50 must be submitted with each application for a livestock broker's or livestock dealer's license. The fee shall be the first annual fee if the license is granted.

(3) Livestock brokers and livestock dealers shall pay an annual fee of $50 and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

(4) When an applicant has paid the fee and met the

requirements of this section, the department shall issue to the applicant a license which entitles the licensee to engage in the business specified in his application for a period of 1 year unless the license is suspended or revoked under [this act].

Section 26. Refusal of livestock broker's or livestock dealer's license. The department shall refuse to issue or renew a license if the applicant:

(1) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets, in excess of total current liabilities;

(2) is in violation of any of the provisions of [this act];

(3) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(4) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(5) is in violation of the rules adopted by the department;

(6) has failed to comply with a lawful order of the

department;

(7) has not filed a surety bond in the form and amount required under [section 27];

(8) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(9) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.

Section 27. Livestock brokers and livestock dealers -- bond required. (1) A livestock broker or livestock dealer applying for a license under [this act] shall maintain a bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921, 7 U.S.C. 181, et seq., he shall file a statement with the department showing he is maintaining a bond or its equivalent under the packers and stockyards act. The department may require evidence of the bond to be filed with it.

(2) The amount of the bond shall be set by the department but may not be less than $5,000. The bond shall contain the following conditions:

"This bond is conditioned on the principal paying to the rightful recipient the purchase price of all livestock

he purchases for himself or others and on the principal safely keeping and properly disbursing all funds received on behalf of others."

(3) Each bond shall contain provisions that a person damaged by failure of the principal to comply with the condition clause of the bond may bring an action to recover on the bond. At least 30 days' notice in writing shall be given to the department by any party terminating the bond.

Section 28. Inspection of records. A livestock broker or livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock broker or livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to his business.

Section 29. Livestock brokers and livestock dealers -- suspension and revocation of license -- procedure. Whenever the department finds that any livestock broker or livestock dealer has violated the provisions of [this act] OR RULES ADOPTED UNDER [THIS ACT], the department may, by order, suspend the license of such person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of such person. Before any license issued under [this act] may be suspended or revoked, the licensee shall be furnished with a copy of the complaint made against him

and a hearing shall be had before the department to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and the place of such hearing. The notice may be served by registered or certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon such evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

Section 30. Termination of livestock broker or livestock dealer license. A license issued under [this act] terminates at the close of business on May 1 of each year following the issuance of the same unless the annual fee has been paid. Termination of the license will automatically occur if the bond required by [section 27] is terminated.

Section 31. Penalties. A person who violates any provision of [sections 25 through 28] or rules adopted by the department under [~~sections-25-through-28~~ SECTION 4] is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

Section 32. Jurisdiction. The justices' courts have

jurisdiction of all ~~actions-for-violation-of-the-provisions~~ MISDEMEANOR AND CIVIL VIOLATIONS of [this act].

Section 33. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by [this act] may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market, livestock broker, or livestock dealer as defined in [section 3] without the license or certificate and bond required by [this act]. The court shall enjoin the person from further activities as a livestock market operator, livestock broker, or livestock dealer until the license or certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in [this act].

Section 34. Transition. Licenses and certificates issued before and still in effect on July 1, 1979, are valid until May 1, 1980, unless suspended or revoked pursuant to this act. The actions of persons holding such existing licenses and certificates are governed by this act.

Section 35. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 36. Codification. This act is intended to be codified as an integral part of Title 81, chapter 8, and the provisions contained in Title 81, chapter 8, apply to this act.

Section 37. Repealer. Sections 81-8-101 through 81-8-109, 81-8-121 through 81-8-133, and 81-8-201 through 81-8-210, MCA, are repealed.

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